



*Executive Search & Assessment*

Are you aware that emerging privacy legislation limits, or will limit, the personal information an employer may collect and retain? **This pertains to Canadian companies and Canada-based subsidiaries of U.S. companies alike. It also affects third party Recruiters a company engages, but appears to hold the Company liable for the Recruiter's actions. We have updated all of our staff on these areas to ensure PIPEDA compliance.** This document is available as a separate download on our website at [www.wolfgugler.com/articles.asp](http://www.wolfgugler.com/articles.asp).

Currently, the *Personal Information Protection and Electronic Documents Act (PIPEDA)* requires an employer to: identify the purposes for which personal information is being collected; limit collection to that which is reasonably necessary in the circumstances; and dispose of the information once the purposes are exhausted. For instance, on job applications and in interviews, asking a candidate questions pertaining to their education and training in order to make an informed hiring decision would be reasonable. In most cases, however, collecting information about a candidate's ethnic origin, marital status or even personal hobbies would be unnecessarily intrusive. If your staff is unaware of this, you could end up with serious legal ramifications. Although PIPEDA applies to federally regulated employers in the private sector only, provincially regulated employers are likely to be bound by similar legislation quite soon. Quebec has already moved forward on this, and several other provinces are in the process of developing their own privacy statutes. Ontario has a draft document ready, and will likely move forward with it shortly.

#### **Employment Advertisements**

Advertisements requiring "Canadian experience" or indicating a preference for single status applicants leaves an employer vulnerable to allegations of discrimination. Instead, ensure your ad speaks to just the skills and expertise directly related to the job.

#### **Application Forms and Interviews**

Application forms should not include questions directly related to any of the protected areas. What employers often overlook, however, are requests for information or documentation that may indirectly reveal details that could lead to a human rights complaint. For instance, stay away from asking for a candidate's social insurance number, which would be a direct violation as it can be used to access other personal information.

Don't ask candidates to provide details about the years they attended school and in some cases, the school's name could reveal age, religious affiliation or birthplace. It's never right to ask for a photograph.

Information requested on a job application should be limited to that which is sufficient for the employer to make an initial appraisal of the candidate. It is appropriate, for example, to ask candidates applying for a field sales role whether they have a valid driver's license. You can possibly defend your question to ask about a candidate's gender for certain retail sales positions, e.g. women's intimates (look at La Senza or Victoria's Secret, for example).

Avoid the same questions in the interview process...but don't be afraid to ask job-related questions to evaluate their suitability for the role.

It is the candidate's choice to voluntarily disclose additional personal information during an interview or on their résumé, and you are then free to discuss it further. It could, however, still lead you to a legal complaint from a disgruntled candidate who feels for whatever reason that he/she should have gotten the job.

In light of this changing human rights and privacy legislation, employers should take particular care in all of the above. You can find out more at <http://laws.justice.gc.ca/en/P-8.6/index.html> or [www.pipeda.org](http://www.pipeda.org).

Please note the above is not intended as legal advice, but only as a matter of informing you to legislative changes you should be aware of. Feel free to contact your legal counsel for more information.